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IN THE

Supreme Court of the United States

October Term, 1981

RESTAURANT EMPLOYEES, BARTENDERS AND HOTEL SERVICE EMPLOYEES WELFARE AND PENSION TRUST, et al.,
Petitioners,

v.

GATEWAY CAFE, INC., et al.
Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

STATEMENT

The case background is set forth in Culinary Workers, Local 596 v. Gateway Cafe, Inc., 91 Wn.2d 353, 357-358, 588 P.2d 1334 (1979) (Gateway I) (Pet. App. A-10 to A-13). Briefly, the Culinary Workers and Bartenders Union, Local No. 596 (Union), obtained the signature

of A. D. Munroe, purchaser of the Gateway Cafe, Inc., on a labor agreement in 1972 through top-down organizing. The agreement designated the Union as the bargaining representative for all employees, despite the absence of an election or other expression of employee interest, and required them to join the Union as a condition of employment. The initial validity of this 1972 labor agreement, and the 1975 ones presently at issue, were governed by the uncertainties of Washington state labor law since the Gateway Cafe did not meet the jurisdictional standards set by the National Labor Relations Board. (Gateway I - Pet. App. A-39 to A-45.)

Mr. Munroe defaulted on his purchase and the sellers, Kyle Cleven and V. W. Larson, resumed operation of the cafe unaware of the labor agreement. The Culinary Workers and Bartenders Union

No. 596 Health and Welfare Trust (Trust Fund) took a default judgment in 1974 for unpaid contributions per the 1972 agreement. The default judgment was settled in February 1975 when then Gateway Cafe paid the Trust Fund $2,000.00 for attorneys' fees, signed a five-month interim labor agreement with the Union, and assigned its bargaining rights to an employers' association for the upcoming negotiations. The interim labor agreement, and the subsequent agreement between the Union and the employers' association in August 1975, recognized the Union as the bargaining representative for all employees and required them to join the Union and remain in good standing as a condition of continuing employment. But again there was no election or other procedure whereby the employees ever expressed a desire to have the Union as their bargaining

representative (Gateway I - Pet. App. A-43, and Gateway II - Pet. App. B-6).

Gateway Cafe subsequently recognized its agreement with the Trust Fund to sign such an agreement with the Union violated Washington state public policy, see Bldg. Service Employees Int'l. Union v. Gazzam, 339 U.S. 532 (1950), and it refused to recognize the Union or to pay contributions to the Trust Fund. The Union filed a declaratory judgment action against Cleven and Larson, the Gateway Cafe, Inc., and its successor, Bypass Sales, Inc., respondents herein (collectively referred to hereinafter as Employer), as to the validity of the August 1975 agreement. The Trust brought a separate action against the Employer for unpaid contributions. The Union and Trust Fund actions were consolidated for trial. During the pendency of the consolidated suit the Union and Trust Fund merged into

a new Union and Trust Fund, petitioners herein. Initially only the validity of the August 1975 labor agreement under state law was considered by the trial court. The Employer argued the agreement was invalid in its entirety because key provisions violated state public policy, and the Union contended otherwise. The Washington supreme court agreed with the Employer and invalidated the heart of that agreement, the union recognition and union security clauses, because they violated the state's public policy which recognized the employees' right to choose their own bargaining representative free from interference by their employer (Gateway I - Pet. App. A-39 to A-46).

On remand of Gateway I to the trial court, the parties were faced with the unexpected question of the interpretation of the labor agreement absent the critical union security and recognition

provisions. The Employer contended that no contributions were due the Trust Fund for two separate and independent reasons: (1) analyzing the labor agreement and trust agreement under state contract law, contributions were required only for employees represented by the Union, and there were no such employees; or, alternatively, (2) federal law prohibited contributions to the Trust Fund because the Union was not the representative of the employees. The Washington supreme court agreed with both Employer contentions:

> We reverse the trial court and hold that the contributions to the trust fund are not due (1) under the unambiguous language of the agreements themselves and (2) because such contributions would violate federal law.

Culinary Workers, Local 596 v. Gateway Cafe, 95 Wn.2d 791, 794, 630 P.2d 1348 (1981) (Gateway II - Pet. App. B-8).

ARGUMENT

1. Review should be declined because the state court decision rests on independent and adequate state grounds.

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. . . . We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review would amount to nothing more than an advisory opinion.

Herb v. Pitcairn, 324 U.S. 117, 125-126 (1945). Accord, Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562, 566 (1977); City of Mesquite v. Aladdin's Castle, Inc., 102 S.Ct. 1070, 1076 (1982).

The Washington supreme court decided Gateway II initially on the interpretation of the applicable documents under state law (Pet. App. B-8 to B-10). The court concluded "the unambiguous language of the agreements

themselves" precluded the collection of contributions by the Trust Fund (Pet. App. B-8). Only in the alternative ("Even absent the language and intent found in the documents themselves" - Pet. App. B-10) did the court address the federal issue. Therefore it is clear the judgment below rested on an independent and adequate state ground such that the same judgment would be rendered even if the lower court's decision on the federal issue was questioned. Review should be declined.

2. The state court decision was correct and it raises no important question of federal law.

The Gateway II opinion was issued July 16, 1981. The Union and Trust Fund requested reconsideration, raising the same arguments raised herein. The Washington supreme court was advised of this Court's decisions in NLRB V. Amax Coal Co., 101 S.Ct. 2789, reh. denied,

102 S.Ct. 26 (1981), and Kaiser Steel Corp. v. Mullins, 102 S.Ct. 851 (1982), before it denied the motion for reconsideration on March 26, 1982, although it did slightly modify its earlier opinion, without changing the result, to make it clear that trust fund contributions were required for union and non-union members if the union was their bargaining representative (Pet. App. C-1 to C-2).

The Court should fully understand the contentions of the Trust Fund and Union herein. It was their position that although the Trust Fund was established under and governed by federal law, 28 U.S.C. § 186(c)(5), and although the Union was not the representative of the Employer's employees, nevertheless the Trust Fund could collect contributions for all employees. This is contrary to the letter and intent of applicable federal law and acceptance of that

position would set a very undesirable precedent.

The Employer contended, and the Washington supreme court concurred, that "representative" of the employees, as set forth in 28 U.S.C. § 186(c)(5), meant the representative selected by the majority of the employees. See, Shapiro v. Rosenbaum, 171 F.Supp. 875, 885 (S.D.N.Y. 1959). Under federal law, without majority support the union is not the representative of the employees regardless of any side agreements between the union and the employer. NLRB v. Canton Sign Co., 457 F.2d 832 (6th Cir. 1972). This Court too has limited its construction of "representative" of the employees, per 28 U.S.C. § 186(a), to someone authorized by the employees to deal with their employer. United States v. Ryan, 350 U.S. 299, 302 (1956). The Union was never so authorized.

The present case may be one of a kind. It involved Washington state law on the underlying contract validity, and state and federal law on the contribution issue. The Union was a party to the collection effort, an unusual situation itself and due to the necessity to have the lack of Union representative status ruled on by the state court. Accordingly, the holding is unique and limited.

Finally, Gateway II is consistent with the recent decisions of this Court. In Gateway II the state supreme court concluded that there must be a collective bargaining agreement with a union which is the representative of the employees for contributions to be lawful. 95 Wn.2d at 796 (Pet. App. B-13). In NLRB v. Amax Coal, supra, this Court recognized that the trust must have a "detailed written agreement, 29 U.S.C. § 186(c)(5), which

is itself the product of bargaining between the representatives of the employees and those of the employer." 101 S.Ct. at 2798 (emphasis added). Then in Kaiser Steel Corp. v. Julius Mullins, supra, this Court permitted the employer to raise illegality defenses to the underlying collective bargaining agreement with the union in an action for unpaid trust fund contributions. In Gateway II the only place the illegality defense (that the union was not the employees' representative) could be raised was in the Trust Fund contribution suit as there was no NLRB jurisdiction, plus the Union was a party to the Trust Fund collection action which further buttresses the appropriateness of raising the illegality issue then. Therefore, there was nothing contrary to this Court's decisions in that respect either.

CONCLUSION

The petition for a writ of certiorari should be denied.

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Respectfully submitted,

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